

**DEPARTMENT OF STATE REVENUE
REVENUE RULING ST 96-15**

May 15, 1997

NOTICE: Under IC 422-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Sales/Use Tax - Purchase and Sale of Telecommunication Services

Authority: IC 6-2.5-4-6, IC 6-2.5-2-1, IC 6-2.5-4-4, Rule 45 IAC 2.2-4-8, *Greensburg Motel v. Dept. of State Revenue*, 629 N.E.2d 1302 (Ind. Tax 1994)

The taxpayer requests the Department to rule on the application of sales/use tax to amounts billed to its guests for telephone services, including access charges and intrastate long-distance calls, and to purchases by the taxpayer of telecommunication services.

STATEMENT OF FACTS

The taxpayer operates a hotel, among other business enterprises, in Indiana. As part of its hotel operations, the taxpayer purchases telephone services from a local exchange carrier and a long-distance carrier and resells these services to its guests. When the guests check out of the hotel, their bill includes an access fee for local or long-distance calls to numbers outside the taxpayer's properties. The taxpayer may, also, bill their guests for long-distance calls based upon the length, location and time of the call.

DISCUSSION

IC 6-2.5-4-6 provides:

- (a) As used in this section, "telecommunication services" means the transmission of messages or information by or using wire, cable, fiber-optics, laser, microwave, radio, satellite, or similar facilities. The term does not include value added services in which computer processing applications are used to act on the form, content, code, or protocol of the information for purposes other than transmission.
- (b) A person is a retail merchant making a retail transaction when the person:
 - (1) furnishes or sells an intrastate telecommunication service; and
 - (2) receives gross retail income from billings or statements rendered to customers.
- (c) Notwithstanding subsection (b), a person is not a retail merchant making a retail transaction when:
 - (1) The person provides, installs, constructs, services, or removes tangible personal property which is used in connection with the furnishing of the telecommunication services described in subsection (a); or
 - (2) the person furnishes or sells the telecommunication services described in subsection (a) to another person described in this section or in section 5 of this chapter.

It is clear that for the taxpayer to sell intrastate telecommunication services the taxpayer must *transmit* messages or information by using wire, cable, fiber-optics, etc. The taxpayer *does not transmit* messages or information by using wire, cable, fiber-optics, etc., but, rather simply purchases telecommunication services from the providers (local exchange carrier and long-distance carrier) and, in turn, permits guests to access the telecommunication services for a fee. The taxpayer, as a purchaser rather than a seller of intrastate telecommunication services, is required to pay sales/use tax on telecommunication services purchased pursuant to the above referenced IC 6-2.5-4-6 and IC 6-2.5-2-1.

The fee charged by the taxpayer is to its guests for access to the telecommunication services, is, also, subject to sales/use tax to be collected by the taxpayer as provided by IC 6-2.5-4-4 and Rule 45 IAC 2.2-4-8. Rule 45 IAC 2.2-4-8, interpreting IC 6-2.5-4-4, states that every person renting or furnishing rooms, lodgings or other accommodations for periods of less than thirty (30) days must collect the gross retail tax on the gross receipts from such transactions. Rule 45 IAC 2.2-4-8, further states, "The gross receipts subject to tax include the amount which represents consideration for the rendition of these services which are essential to the furnishing of the accommodation, and those services which are regularly provided in furnishing the accommodation. Such amounts are subject to tax even when they are separately itemized on the statement or invoice." In the instant case, the taxpayer's provision of access to telephone services for its guests is a service regularly provided in furnishing an accommodation by the taxpayer, hence, the fee for same is defined as gross receipts received from furnishing accommodations for periods of less than thirty (30) days and is subject to sales/use tax.

This conclusion results in the taxpayer paying sales/use tax on the purchase of telecommunication services (access fee) and its guests, also, paying sales/use tax on the access fee. This is not at all inconsistent with the Indiana Tax

Court's opinion on this issue. In *Greensburg Motel v. Dept. of State Revenue*, 629 N.E.2d 1302 (Ind. Tax 1994), the taxpayer (a motel owner and operator) argued that tax pyramiding occurs in its industry because they (hotels, motels, etc.) are providing a taxable service and are not exempt from sales tax on their purchases of consumable items, non-consumable items, and utilities. The Court simply stated, "Not every purchase incorporated into a service is exempt from sales tax."

Charges made by the taxpayer to its guests for separately stated intrastate "toll" telephone calls are not subject to the collection of sales/use tax by the taxpayer (interstate telephone calls are exempt from sales/use tax by statutory definition). "Toll" calls do not fall within the ambit of Rule 45 IAC 2.2-4-8, but, do fall within the ambit of IC 6-2.5-4-6 as telecommunication services. The taxpayer is a purchaser of telecommunication services rather than a seller of telecommunication services, as established earlier in this discussion, therefore, is not to collect sales/use on "toll" calls. This is because the taxpayer is paying sales tax on the toll charges when it pays the telecommunications provider and is merely being reimbursed for such payments when it passes the costs on to its guests.

RULING

The Department rules that the taxpayer is required to pay sales/use tax on all telecommunication services purchased. The taxpayer is not required to collect sales/use tax on separately stated charges made by the taxpayer to its guests for intrastate (interstate) "toll" calls. Toll calls are those placed to numbers outside the taxpayer's properties. The fee charged by the taxpayer to its guests for "access" to telecommunication services is subject to sales/use tax. Access is a term of art which includes the provision of a telephone in the guest's room.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in a statute, a regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.